Supreme Court, U.S.
FILED
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No. _____

IN THE

Supreme Court of the United States

PERRY H. KAY, SR.

Petitioner

VS

COMMISSIONER OF INTERNAL REVENUE

Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO

Fifth Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Special Trial Judge in the United States Tax Court ordered the Petitioner to testify without obtaining an order for immunity or advising the Petitioner of his rights. The facts produced at the trial were abandoned. The Respondent conceded all of the issues raised in the letter of deficiency.

The trial judge's opinion is made of findings of fact which misrepresents the trial record.

Whether or not a judgement for tax liability is void when such judgment violates Article 1, Section 8 of the United States Constitution?

Whether or not the Appeals Court commits legal error when such courts confirms a judgment that is void on its face?

Whether or not the Court denies the equal protection clause of the Fourteenth Amendment to a petitioner when the Court orders said petitioner to testify and does not inform him of his rights?

Whether or not a petitioner is denied Due Process guaranteed by the Fourteenth Amendment when he is not allowed his counsel and accountant to present his case?

Whether or not the taxpayer's rights against self incrimination are violated when he is ordered to testify without an order for immunity, or informing the Petitioner that he will not be charged for any testimony obtained from him?

Whether or not substitute teachers income can be classified as income from part-time teaching assignments.

PARTIES TO PROCEEDINGS:

All parties to the proceeding are listed on the cover.

JURISDICTION STATEMENT

This is an application for a Writ of Certiorari to review a judgment confirming a Memorandum Decision dated August 8, 2002 in the United States Tax Court and entered into the record November 13, 2002. The Fifth Circuit Court of Appeals issued its Order on December 22, 2003 confirming the Tax Court's decision. The court's jurisdiction is outlined in Title 28, Rules of Appellate Procedures in federal courts.

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AUTHORITIES

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STATEMENT OF THE CASE

The petitioner, a retired school teacher supplemented his retirement income in 1988 by (a) substitute teaching, (b) starting an entertainment group playing music for various occasions. The petitioner needed a cargo van to transport his equipment. A used passenger van was purchased in 1997 and converted to a cargo unit to be used starting January 1, 1998 for transporting the entertainment equipment. He owned a small two-door HT Chrysler which was not adequate for transportation in the music business.

The petitioner earned $2,500.00 during 1998 providing music entertainment. From this income he expensed the cost of the van (time payment costing $1,6296.80), the payment to the accountant, $751.00; the convention expense, $2,785.52. These adjustments changed his gross income to $14,035.59. The Court determined all of the convention expenses and marked them 18-P for the record.

The memo opinion argues issues that the Respondent had conceded. The Respondent raised objection to the expense deduction of the van under IRC 179. This was a new matter. The Respondent did not produce any evidence or testimony to show this van was not a part of the Petitioner's earnings and business expenses. This was a new matter and the burden of proof was on the Respondent.

Court determined the repair cost to the house and marked them Ex. 17-P. These costs consists of the following:

The insurance payment of $867.00 less $500.00 deductible ($1367.00); interior repairs, $2,300.00; material and supplies, $1,615.33. The total repairs were $6,165.33.

Add the adjusted medical expense, $1,162.58; tax, $529.17; charity, $380.00; mortgage interest, $2,685.00. The total Schedule A deduction is $10,915.83 when subtracted from the Adjusted Gross Income of $14,035.59 the difference is $3,119.76. The total exemption of $5,400.00 (2 x 2700). Taxable income $0, tax $0, the $1,220.00 education credit was not used since there is no income tax liability.

All of this information was in the trial record. The trial court's opinion would jeopardize a retired teacher's income (retirement income) when the additional earnings are classified as part-time teaching employment. The Court's opinion raises the issue of earnings from teaching after retirement. This was the law in 1998. The question surrounding teachers presently involves trying to heal the injury and make a distinction between earnings from teaching and other earnings of a retired teacher. The general position is (was in 1998) a teacher cannot make earnings from teaching as a part-time teacher.

REASONS FOR GRANTING THE WRIT

The powers of the Internal Revenue Service are awesome and taxpayers suffer frequent abuses. The tax reforms will not survive unless all of the Circuits are in accord. I respectfully submit the Fifth Circuit is out of step with the other jurisdictions in this matter. The trial judge did not follow the findings developed during the trial. The status of the taxpayer, the income produced, the expenses of the music business, the travels conventions for musicians, the court established and marked Ex. 18-P (Tr53).

The damage to the house, and the receipts for repairs were marked Ex. 17-P, (Tr 75).

The costs of the van were established in the stipulation of facts. (Tr. 4)

The court committed legal error when the 1040-X was not admitted at the trial, the court has jurisdiction to accept all information filed once a letter of deficiency is issued.

The respondent conceded: filing status, business expenses, payment of the accountant, convention and travel expenses associated with the conventions, repairs to the home as a result of the storm damage.

Testimony of respondent's only witness, the Petitioner, the accountant all established the van was used in the business.

No information was presented to show petitioner was not entitled to expense deductions under IRC 179 for the cost of the van.

The Court's opinion in trying to establish a tax liability for the Petitioner; tried to establish all monies earned from the school (teaching income) were "above the line" and deductible. The idea being all convention expenses were paid for by the employing school.

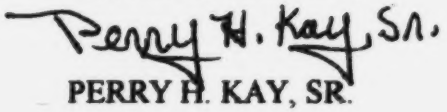
ARGUMENT IN SUPPORT OF WRIT

The deficiency letter is accorded certain credibility and is assumed to be correct, if the Petitioner's testimony disapproves the deficiency is believable, he carries his burden Demkowicz v. Commissioner, 551 F2d 929 (3rd Cir 1977). This is the general rule. If the Respondent alleges new matters, increase in deficiency, or affirmative defense, the burden of proof is upon the Respondent as to that issue T.C. Rule 142(a), T.C. Memo 1977-369, the respondent did not produce any evidence or information to overcome Respondent's burden that Petitioner was not entitled to expense the van he used in his music entertainment business in 1998. The Appeals Court erred in affirming the T.C. Memo Opinion of August 8, 2002 in their order of December 2003. The opinion argues points that has been conceded by the Respondent. This Writ should be granted because the Respondent did not have grounds for a deficiency . This type of abuse and expense to the taxpayer must be curtailed and constitutes the major reason the Senate Tax Reform Committee, during the life of Senator Long, advised that the tax court should come under the supervision of the Judiciary.

CONCLUSION

For the foregoing reasons the Petitioner will respectfully pray that the Court grant this Writ of Certiorari.

Respectfully submitted,



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